

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:	:	Chapter 11
	:	
553 WEST 174TH ST. LLC, <u>et al.</u>	:	Case No. 11-14968 (SHL)
	:	
Debtor.	:	
	:	
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Bryan Binder and 553 West 174th St. LLC,	:	
	:	
Plaintiffs,	:	
	:	Adv. Pro. No. 12-01054
-against-	:	
	:	
SE Opportunity Fund, LP, Seth Miller, Seymour Hurwitz and Steven Etkind,	:	
	:	
Defendants.	:	

AMENDED STIPULATION AND CASE MANAGEMENT ORDER

SE Opportunity Fund LP (“SE”), Seth Miller, individually, and Jennifer Miller, the Trustee of SE’s general partner, on the one hand, and Bryan Binder, on the other hand (“Binder” and, collectively with SE and the Millers, the “Parties”) and Seymour Hurwitz having consented to removal to this Court of the civil action originally commenced in the Supreme Court of the State of New York, County of New York captioned as “Bryan Binder and 553 West 174th St. LLC v. SE Opportunity Fund, LP, Seth Miller, Seymour Hurwitz and Steven Etkind,” Index no. 115160/2010 (the “Removed Action”); and the Parties intending to consent to the jurisdiction of, and adjudication by, this Court of all issues raised in the State Court Litigation; and the Parties agreeing that this Court shall have jurisdiction (i) to adjudicate all issues raised by the Parties in the Removed Action and (ii) to grant any and all relief requested or to be requested by the Parties

in the Removed Action; and upon the record of the conferences held before this Court in the above-captioned cases (the “Cases”) on November 29, 2011, December 6, 2011, and February 10, 2012; and the Parties intending to amend the discovery schedule set by the Stipulation and Case Management Order entered in this case on January 10, 2012 (the “First Case Management Order”); and upon the explicit consent by each of the Parties to each of the provisions of this Order; it is hereby

ORDERED that, for the avoidance of doubt, the Parties explicitly recognize and consent to this Court’s authority to award, among other relief, specific performance of any contract at issue and counterclaims to recover attorneys’ fees, disbursements and expenses incurred by Seymour Hurwitz in the Removed Action to the extent this Court otherwise deems such relief warranted; and it is further

ORDERED that the Parties shall conduct discovery in connection with the aforementioned issues as a contested matter pursuant to Federal Rule of Bankruptcy Procedure 9014 in accordance with the terms of the First Case Management Order except as otherwise modified herein; and it is further

ORDERED that all claims of the Parties against Seymour Hurwitz arising from the Removed Action are hereby dismissed with prejudice; and it is further

ORDERED that nothing herein shall prejudice, impair or affect Seymour Hurwitz’s rights with respect to his counterclaims asserted in the Removed Action, such counterclaims shall be tried at the same time as the trial of the Removed Action and, in the event the Removed Action is settled or otherwise disposed of, Seymour Hurwitz shall have the counterclaims severed and adjudicated by this Court; and it is further

ORDERED that any funds and other interests being held in escrow by Seymour Hurwitz in connection with the events at issue in the Removed Action shall remain in escrow with Seymour Hurwitz until this Court enters an order directing the release of such funds and interests from escrow; and it is further

ORDERED that the Parties agree to keep Seymour Hurwitz's counsel, Glenn Backer, apprised in writing via email of developments in the Removed Action including but not limited to any modification of the schedule set forth herein; and

ORDERED that all discovery shall be completed on or before April 30, 2012; and it is further

ORDERED that dispositive motions, if any, shall be filed by May 7, 2012, with answering papers due by May 21, 2012, and reply papers due by May 28, 2012; and it is further

ORDERED, that a joint pre-trial order shall be filed by the later of June 18, 2012, ~~or the date that is 10 days after the Court rules on dispositive motions~~; and it is further

ORDERED that the Parties shall exchange lists of witnesses and exhibits by the later of June 7, 2012, or the date that is 10 days after the Court rules on the last of the dispositive motions; and it is further

ORDERED that the Parties shall deliver to the Court their final list of witnesses and exhibits by the later of June 12, 2012, or the date that is 14 days after this Court rules on the last of the dispositive motions; and it is further

ORDERED that a trial shall be scheduled for the week of June 25, 2012, or as soon thereafter as the Court's schedule permits; and it is further

ORDERED that a final pretrial conference shall be held on **June 12, 2012** at **10:00 a.m.**
(ET) *at which time the Court will discuss any pending dispositive motions and scheduling of the trial*; and it is further

ORDERED, that, only after exhausting good faith efforts to resolve discovery disputes, the parties shall contact chambers to request a conference in lieu of motion practice.

CONSENTED TO:

Dated: New York, New York
April 20, 2012

Dated: New York, New York
April 20, 2012

KLESTADT & WINTERS, LLP
Counsel to Bryan Binder

CLAUDE CASTRO & ASSOCIATES PLLC
Counsel to SE Opportunity Fund LP

By: /s/Patrick J. Orr
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Dated: New York, New York
April 20, 2012

Glenn Backer, Esq.
Counsel to Seymour Hurwitz

/s/Glenn Backer
292 Madison Avenue, 22nd Floor
New York, New York 10017
Tel. (212) 686-7644

SO ORDERED:
Date: **May 4, 2012**

/s/ Sean H. Lane
UNITED STATES BANKRUPTCY JUDGE